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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1931.

No. 185.

BALTIMORE AND PHILADELPHIA STEAMBOAT COMPANY
and
MARYLAND CASUALTY COMPANY,
Petitioners,
vs.
AUGUSTUS P. NORTON, Deputy Commissioner for Third Compensation District of United States,
and
EMIL BRUNO GUBE,
Respondents.

PETITION OF THE MARYLAND CASUALTY CO. FOR A REHEARING

EDWIN A. SWINGLE,
Counsel for Petitioner.

J. D. MILAM & SONS, 707 EIGHTH ST. N. W., WASHINGTON, D. C.

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AUGUSTUS P. NORTON, Deputy Commissioner for Third Compensation District of United States,

and

EMIL BRUNO GUBE,
Respondents.

PETITION FOR REHEARING.

Comes now the above-named Maryland Casualty Company, and presents this its Petition for a Rehearing of the above-entitled cause, and in support thereof respectfully shows:

1. The Longshoremen's and Harbor Workers' Compensation Act (33 U. S. C., Secs. 901-908), including Section 8, here involved, was a substantial verbatim adoption by the Congress of the United States of the Compensation Act then in force in the State of New York.

2. When Congress adopted this State legislation, it must be presumed to have adopted it as it was then understood and applied in the State of New York.

3. At the time of, as well as prior and subsequent to, its adoption by Congress, the New York Act was consistently construed, understood and applied in the State of New York as prohibiting the allowance of concurrent or consecutive compensation awards, that is to say: awards for temporary total disability in addition to awards for permanent partial disability, irrespective of whether the permanent partial disability consisted of a total or partial loss of or loss of the use of a member.

4. The Longshoremen's Act has consistently been construed by the Federal Courts throughout the United States as not allowing concurrent or consecutive awards.

5. Nowhere does the Act expressly provide for such cumulative awards or payments, either concurrently or consecutively.

6. But there is nothing in the Act which would prevent an injured employee from electing to claim compensation for his temporary total disability rather than his permanent partial disability in a case where an allowance for temporary total disability would exceed an allowance for permanent partial disability.

7. If Congress had intended to require the payment of concurrent or consecutive awards, it is to be pre-

sumed that it would have said so. Certain State Compensation Acts did, at the time Congress adopted this legislation, expressly so provide. This, therefore, was a matter of legislative policy. And, while the Act may be deemed to be in the public interest, yet it undoubtedly is also in derogation of common law, and does away with certain well established common law defenses such as the fellow servant doctrine, and the doctrines of assumed risks and contributory negligence; and in addition thereto creates liabilities and imposes upon employers duties and obligations unknown to the common law, and requires payments to be made irrespective of any negligence on the part of the employer.

For the foregoing reasons it is respectfully urged that this Petition for a Rehearing be granted, and that the judgment or decree of the United States Circuit Court of Appeals for the Third Circuit be, upon further consideration, reversed.

Respectfully submitted,

EDWIN A. SWINGLE,
Counsel for the Maryland
Casualty Company, Petitioner.

Certificate of Counsel.

I, Edwin A. Swingle, counsel for the above-named Maryland Casualty Company, Petitioner, do hereby certify that the foregoing Petition for a Rehearing of this cause is presented in good faith and not for delay.

EDWIN A. SWINGLE,
Counsel for the Maryland
Casualty Company, Petitioner.

BRIEF IN SUPPORT OF PETITION.

Federal Adoption of State Legislation.

1. On March 4th, 1927, Congress passed the Longshoremen's and Harbor Workers' Compensation Act, which was an adoption and practically a verbatim copy of the Compensation Act then in force in the State of New York. This is not, and cannot be, disputed, and not only can be demonstrated by a comparison of the two Acts, but has actually been recognized by the Federal Courts.

In *Bethlehem Shipbuilding Corporation vs. Monahan*, 50 Fed. (2d) 457, in speaking of the Longshoremen's Act, the Court said: "I am aware that this statute was copied from the New York statute."

And the Circuit Court of Appeals for the First Circuit, in its very recent opinion in this same case, ... Fed. (2d) ..... (decided December 17th, 1931), says: "The provisions of the Act here in question (as well as the Act itself) were taken verbatim from an Act passed by the Legislature of New York."

See also *Texas Employers' Insurance Association vs. Sheppeard*, 32 Fed. (2d) 300.

2. In thus adopting the Compensation Act of New York State, Congress must be presumed to have adopted said jurisprudence as it was then understood and applied in the State of New York.

In *Metropolitan R. R. Co. vs. Moore*, 121 U. S. 558, 30 L. Ed. 1022, this Court said:

> "The sections of the Revised Statutes relating to the District of Columbia under consideration, it is admitted, were taken substantially from the New York Code of Procedure of 1851, 1852; and it is admitted, also, that, by the construction

placed upon the language contained in section 804 by the courts of New York, it includes motions to set aside a verdict against the weight of evidence, as within the phrase 'for insufficient evidence.' This was the very point determined in the case just referred to, of Algeo vs. Duncan, 39 N. Y. 313, and in McDonald vs. Walter, 40 N. Y. 551. The Supreme Court of the District of Columbia, however, in Stewart vs. Elliott, ubi supra, declined to follow these decisions of the New York Courts, because they construed the Code of Procedure of that State so as to conform to the previous well established practice in that State; and it was held that in the District of Columbia the case was widely different, because prior to the adoption of these provisions in the Act of Congress the well established practice in the District of Columbia was that which had always been in force in the State of Maryland. * * *

"Instead of construing these new statutory provisions in the light of the jurisprudence of Maryland previously prevailing in the District in reference to this subject, we think that when Congress reorganized the judicial system of the District, by abolishing the old courts and by establishing the present Supreme Court of the District, with its General and Special Terms, and adopted them from the legislation of New York in substantially the same language, these provisions are to be construed in the sense in which they were understood at the time in that system from which they were taken. In other words, we think that Congress adopted for this purpose the law of New York as it was understood in New York. McDonald vs. Hovey, 110 U. S. 619 (28:269)."

See also, to the same effect, *Brown vs. Walker*, 161 U. S. 591; *Capital Traction Company vs. Hof*, 174 U. S. 1, 43 L. Ed. 873; *Henrietta Mining Co. vs. Gardner*, 173

U. S. 123, 130; *Texas Employers' Insurance Association vs. Sheppeard*, 32 Fed. (2d) 300; *Cunningham vs. Commissioner of Banks*, 249 Mass. 401, 423; *Bethlehem Shipbuilding Corporation vs. Monahan* (C. C. A.), ... Fed. (2d) ..... (hereinafter quoted); 36 Cyc. 1154, Note 81, and cases there cited.

Construction of New York Act When Adopted by Congress.

3. The Courts of New York, at, prior and subsequent to the time of the adoption by Congress of the Longshoremen's Act, consistently held and interpreted the New York Compensation Act as denying to an injured employee payment for both temporary total and permanent partial disability, and this, irrespective of whether the permanent partial disability consisted of a total or proportionate loss of, or loss of use of, a member.

Apparently the earliest case on this subject decided by the New York Courts is Fredenburg vs. Empire United Rys., 154 N. Y. S. 351, decided July 1st, 1915, wherein the employee sustained injuries resulting in the amputation of one foot and other injuries not shown to be permanent. The Commission made an award for permanent partial disability, and in addition an award for temporary total disability. The Court held that this was not in accordance with law, and said:

> "Making the second award was, we think, plainly contrary to the intent of the Compensation Law. * * * There is nothing to be found in the Act justifying the allowance of concurring compensation for temporary total disability when the employee is already receiving a weekly

compenstaion of two-thirds of his average weekly wages, or full compensation for total disability. The Act provides but the single rate of compensation, to-wit, 66 2/3 per centum of the employee's average weekly wages; and this percentage for a longer or shorter period is applicable to all disabilities, whether total or partial, and is the maximum compensation provided for by the statute. The Act was not intended as a source of profit to the employee, or as a means of punishment of the employer, who, in many cases, is wholly free from any fault in connection with the accident. If concurring awards may be allowed, it is easy to see how that practice may be carried to such an extent as to become very burdensome and unjust to the employer and very unfortunate to an improvident employee, and to a considerable extent render nugatory the beneficent purpose of the statute."

Then came the case of *Marhoffer vs. Marhoffer*, 220 N. Y. 543, 116 N. E. 379, decided by the Court of Appeals of New York on May 1st, 1917. In that case the employee suffered a total loss of his second finger, which constituted a permanent partial disability, and also sustained severe lacerations to his thumb and index finger, which, it was claimed, constituted temporary total disability. The question in that case was whether consecutive compensation, first, during temporary disability, and thereafter, for permanent partial disability, could be allowed. The Court, in a detailed opinion, held that inasmuch as the legislature had not seen fit to provide in the Act for concurrent or consecutive compensation, this could not be done, and said that: "The order of the Appellate Division affirming the award for 8 weeks' temporary total disability should be reversed." And while it is true, as pointed out by this Honorable Court in its opinion in the pres-

ent case, that the Marhoffer case might be considered as a case involving permanent partial loss, consisting of the total loss of a member, which circumstances admittedly would preclude an additional recovery for temporary total disability, yet the opinion in the Marhoffer case does not show that the Court decided that case on this theory, but rather that the Court decided the case on the sole theory that the New York Act did not allow compensation for both types of disability. The New York Courts undoubtedly understood the Marhoffer opinion to mean this because in cases decided subsequent to the Marhoffer case involving instances where the permanent partial disability did not consist of the total loss of a member but only a proportionate part of a member, nevertheless followed, and frequently cited and quoted the Marhoffer case for their authority.

This is clearly demonstrated in the case of *Labionti vs. John Meehan & Sons,* 215 App. Div. (N. Y.) 607, decided March 3rd, 1926, and prior to the adoption by Congress of the New York Act, in which case the claimant sustained a temporary total disability and a permanent partial disability, consisting of the loss of only a part of his great toe. The Court there held that the claimant could not recover anything for his temporary total disability.

In *Hinly vs. Brooklyn Heights R. Co.,* 215 App. Div. 857; 213 N. Y. S. 321, decided January 15th, 1926, the employee sustained the loss of her left leg and a temporary disability to her right leg. The Court held that she was not entitled to compensation for the temporary disability to her right leg, and said:

> "Award reversed and claim dismissed, with costs against the State Industrial Board, on the

ground that the injury to the claimant's right leg was not proven or found to be other than a temporary disability; that this disability was present during the period when claimant was being paid compensation for the loss of her left leg; that an award for the right leg cannot be appended to an award for the left leg, the former to begin when the latter ended; that the two injuries constituted but one disability to work; that the award for the left leg was more than $3,500; that the sum so awarded and paid must be considered in connection with the injury to the right leg; that, so considered, the claimant may not receive further compensation on account of such temporary disability; that the case of Marhoffer vs. Marhoffer, 220 N. Y. 543, 116 N. E. 379, precludes the claimant from receiving compensation for the injury to her left leg."

On September 20th, 1928, the Appellate Division of the Supreme Court of New York decided the three cases of *Rubenstein vs. Pechter Baking Co.*, 230 N. Y. S. 577; *Gefers vs. New York Window Cleaning Co.*, 230 N. Y. S. 706; and *Hoffman vs. Chatham Electric Light, Heat and Power Co.*, 230 N. Y. S. 849.

In the *Rubenstein* case, the appeal was from an award for the total loss of use of the left eye, which was in addition to a previous schedule award for the loss of use of one-half of the hand. The question was whether one schedule award for the loss of use of a member may be made to begin at the conclusion of another schedule award for the loss or partial loss of use of another member. The Appellate Division said that "a schedule award for temporary partial disability may not be appended to an award for temporary total disability, so that compensation for the former

begins to run at the end of the period covered by the latter"; citing and quoting from the Marhoffer case.

In the *Gefers* case, the Board made three schedule awards to run consecutively for multiple injuries.

And, in the *Hoffman* case, an award was made for the permanent loss of use of 40 per cent of the right hand, and also 35 per cent loss of use of the left hand, to be paid consecutively.

The Appellate Division held, in all three of these cases, that concurrent or consecutive awards cannot be made under the New York Act. Later these three cases were appealed, and thereafter decided in *Hoffman vs. Chatham Electric Light, Heat and Power Co.*, 249 N. Y. 433, on December 4th, 1928, in a per curiam opinion which said that "Under our ruling in Matter of Marhoffer vs. Marhoffer (220 N. Y. 543), awards for injuries may not properly be consecutive."

In fact, so well settled had this jurisprudence been established in the State of New York that in the case of *Eppenstein vs. Adams & Co.*, 230 N. Y. S. 714, decided September 20th, 1928, and affirmed in 250 N. Y. 562, where the employee sustained a 25 per cent permanent loss of use of the foot and leg, and at the same time suffered 28 weeks' temporary total disability, neither side even contended that temporary total disability could be granted in addition to permanent partial disability, nor did the Court allow claimant anything for the schedule healing period, but only for the excess.

To further illustrate the fact that this interpretation had become well settled, the New York State Department of Labor, in its Special Bulletin No. 161, issued in August, 1929, which is the official publication of the Industrial Board which administers the New York Act, at page 103 recognizes, in applying Subdivision 4-a of

Sec. 15 of the New York Act, which is the same as Sec. 908 (c) (22) of the Longshoremen's Act here under discussion, no distinction between total loss and partial loss of a member, and does not allow an award for temporary total disability to be made in addition to an award for permanent partial disability.

Construction by Federal Courts.

4. The Federal Courts throughout the United States have consistently followed the New York decisions in holding that concurrent or consecutive awards are not allowed by the Longshoremen's Act.

The latest of these cases is that of *Bethlehem Shipbuilding Corporation vs. Monahan, supra,* decided by the United States Circuit Court of Appeals, for the First Circuit, No. 2601—October Term, 1931, on December 17th, 1931 (not yet printed), six days after the argument before this Honorable Court of the case at bar, for which reason it was obviously impossible for Petitioner to bring the same to the attention of this Court. We quote, however, below, this opinion in full:

> "This is a suit to set aside for error in law the award of the commissioner under the Longshoremen's and Harbor Workers' Compensation Act (33 U. S. C. Secs. 901-905) in a case of temporary total disability and permanent partial disability, both resulting from the same injury, consisting of a total loss of hearing in the claimant's right ear.
>
> "The commissioner awarded the claimant compensation for twenty-three weeks and four days for total temporary disability from December 28, 1928, to June 9, 1929, inclusive, at the rate of $22.08 per week (66 2/3 per centum of $33.12, his average weekly wage); and for

fifty-two weeks for permanent partial disability commencing June 10, 1929, at the rate of $22.08 per week; allowing, however, as a credit thereon, $517.30 paid on that account.

"The provisions of the Act under which the commissioner awarded compensation are found in Sec. 8 (b) and (c) (13), which read as follows:

'Sec. 8. Compensation for disability shall be paid to the employee as follows:

(b) Temporary total disability: In case of disability total in character but temporary in quality, 66 2/3 per centum of the average weekly wages shall be paid to the employee during the continuance thereof.

(c) Permanent partial disability: In case of disability partial in character but permanent in quality the compensation shall be 66 2/3 per centum of the average weekly wages, and shall be paid to the employee, as follows:

(13) Loss of hearing: Compensation for loss of hearing of one ear, fifty-two weeks. Compensation for loss of hearing of both ears, two hundred weeks.'

"The single question in this case is whether the claimant is entitled to an award of compensation, for a disability resulting from the same injury, under the provisions of both Sec. 8 (b) and Sec. 8 (c) (13). In other words, does the Act contemplate and provide for concurrent or consecutive compensation under these two provisions? The construction of the Act in this particular and as an original question may be regarded as doubtful. It certainly presents a close question. But we do not find it necessary to pass upon it as an original proposition for it appears that the provisions of the Act here in question (as well as the Act itself) were taken

verbatim from an Act passed by the Legislature of New York (N. Y. Consolidated Laws, Chap. 67), which had a well settled construction before their adoption by Congress.

"The Act, when first enacted in New York, included the provisions contained in Sec. 8 of the Federal Act, with the exception of paragraph (22) of subdivision (c). Paragraph (22), however, became a part of and was added to the New York Act in 1924 (N. Y. Laws, 1924, Chap. 500); and in 1927 Congress adopted the provisions of that Act as amended in 1924, which is the Act now under consideration.

"In 1917 the Court of Appeals of the State of New York, in the case of Marhoffer vs. Marhoffer, 220 N. Y. 543; 116 N. E. 379, had under consideration the construction and meaning of the corresponding provisions of Sec. 8 (b) and (c). At that time, it is to be remembered, the New York Act did not contain the additional provisions embodied in Sec. 8 (c) (22). In construing the corresponding provisions of Sec. 8 (b) and (c), in a case that involved the loss of an arm, it was held that the claimant was not entitled to concurrent or consecutive compensation under subdivisions (b) and (c) for temporary total disability and permanent partial disability; and compensation for permanent partial disability only was awarded.

"And in 1926, after the adoption of the additional provisions in (c), paragraph (22), the Appellate Division of the Supreme Court of New York, on March 3, 1926, in Labionti vs. John Meehan & Sons, 215 App. Div. 607; 214 N. Y. Supp. 442, reaffirmed the doctrine of the Marhoffer case, holding that a claimant was not entitled to concurrent or consecutive compensation under the corresponding provisions of

"Since the adoption of the New York Act by Congress, the New York courts have held to the same construction of its Act. Hoffman vs. Chatham Electric Light, Heat & Power Co., 224 App. Div. 799; 230 N. Y. Supp. 849; Gefers vs. N. Y. Window Cleaning Co., 224 App. Div. 792; Rubenstein vs. Pechter Baking Company, 224 App. Div. 324; 230 N. Y. Supp. 577,—all three of which cases were affirmed by the Court of Appeals in 249 N. Y. 433; 164 N. E. 341.

"Such being the settled construction of these provisions of the New York Act at the time of its adoption in 1927, it is to be presumed that Congress intended that such provisions should be understood and applied in accordance with that construction. In other words, that it adopted the Act with the construction placed upon it by the New York courts. Capital Traction Co. vs. Hof., 174 U. S. 1, 36; Henrietta Mining Co. vs. Gardner, 173 U. S. 123, 130; Texas Employers' Insurance Ass'n vs. Sheppeard, 32 Fed. (2d) 300; Cunningham vs. Commissioner of Banks, 249 Mass. 401, 423; 36 Cyc. 1154, note 81, and cases there cited.

"The decree of the District Court dismissing the bill is vacated, and the case is remanded to that court for further proceedings not inconsistent with this opinion."

To the same effect is the case of *Grays Harbor Stevedore Company vs. Marshall*, 36 Fed. (2d) 814; and *Texas Employers' Insurance Association vs. Sheppeard*, 32 Fed. (2d) 300; both of which cases involved temporary total disability followed by permanent partial disability, consisting of a proportionate loss, or loss of use, of a member, rather than a total loss, or loss of use of, a member.

In addition to the Federal Courts, many State Courts have decided that concurrent or consecutive awards

for temporary total disability, in addition to permanent partial disability, cannot be allowed. See

Boune vs. Rolling Mills Co., 95 Conn. 295;
Amer. Mut. Liab. Ins. Co. vs. Braden (Ga. App.) 157 S. E. 904;
Hardin vs. Higgins Oil and Fuel Co., 147 La. ....., 85 S. 202;
Reay vs. Elmira Coal Co. (Mo. App.), 34 S. W. (2d) 1015 (under statute);
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Marsh vs. Aljoe, 41 Wyo. 220;
Fid. Union Casualty Company vs. Munday (Texas), 26 S. W. (2d) 676;
Johnson vs. Cole (Ind. App.), 161 N. E. 700.

Act Does Not Expressly Provide for Cumulative Awards.

5. That the Longshoremen's Act does not expressly provide for cumulative awards, payable either concurrently or consecutively, is obvious from a reading thereof, and as is said in the Marhoffer case, *supra*, "The law is silent on the subject."

Election by Employee.

6. However, there is nothing in the Act which would prevent an injured employee from electing to claim compensation for his temporary total disability rather than for his permanent partial disability, where it would be to his advantage so to do, as, for instance, in any case where an allowance for temporary total disability would exceed an allowance for permanent partial disability where the percentage of permanent partial disability was small. In the opinion of Judge

Woolley in the Circuit Court of Appeals, in the case at bar, 48 Fed. (2d) 57, he says:

> "Some authorities interpret a similar state statute (meaning evidently the New York Act) on the theory that although a man may suffer two kinds of injury from the same accident, he can not claim compensation for both temporary total disability and permanent partial disability *but must elect* the compensation payable for one or the other as suits him best."

This principle is also recognized in *Texas Employers' Insurance Association vs. Sheppeard, supra,* where the Court says that an injured employee "may claim either temporary total or permanent partial as suits him best, but cannot claim both."

Legislative Policy.

7. Whether or not concurrent or consecutive awards should be allowed is a matter of legislative policy. Apparently Congress did not deem it wise to provide for such double awards. It may have thought that inasmuch as the legislation itself, though in public interest, yet also in derogation of common law, creates additional liabilities, and imposes upon employers duties and obligations unknown to the common law, irrespective of any negligence on their part, and eliminates such common law defenses as the fellow servant doctrine and the doctrines of assumed risks and contributory negligence, were such a burden directly upon the employers and indirectly upon the consuming public, that a fair exchange for these ought not to require a double payment in any sense to the employee. The Compensation Acts of various states other than New

York at the time Congress adopted this legislation did expressly so provide; but Congress did not see fit to adopt the Compensation Act of any such state, nor in adopting to change the New York State Act in that regard. It cannot, therefore, be easily presumed that Congress meant to impose this double liability. As is stated in the *Marhoffer* case, *supra:*

> "The entire matter is committed to the legislative discretion (Shanahan vs. Monarch Engineering Co., 219 N. Y. 469, 114 N. E. 795), which has not seen fit to provide for concurrent (Matter of Fredenberg vs. Empire U. Rys., Inc., 168 App. Div. 618, 154 N. Y. Supp. 351) or consecutive compensation. If the act is not sufficiently broad, in view of the fact that it covers negligent as well as non-negligent injuries, we may not disregard its provisions to deal more scientifically or justly with the subject."

And in the *Sheppeard* case, *supra,* the Court said:

> "If Congress, which has adopted the New York Act and the construction which the New York courts have put upon it, desires to change the statute so as to avoid either the language or the construction placed upon it by the New York courts, it may do so, but until it does so the Commissioner must administer the Act as it is written, and as it has been interpreted, and not under an arbitrary rule conceived by it to be more beneficial than the one prescribed by statute."

Dependent Litigation.

There are now pending for argument and decision in the Court of Appeals of the District of Columbia at least four suits, the question in each of which is whether or not concurrent or consecutive compensa-

tion awards are payable under the Workmen's Compensation Act for the District of Columbia, which is an adoption in *haec verba* by Congress of the Longshoremen's Act under discussion in the present case. In addition to this, there are at least six other cases in the Supreme Court of the District of Columbia involving the same question, all of which have been appealed to the Court of Appeals of the District of Columbia, but are now being held in *status quo* on stipulations, pending a decision of the question involved. Inasmuch as the questions raised by the foregoing Petition for Rehearing are not finally disposed of in the opinion heretofore rendered by this Honorable Court in this case, it is respectfully suggested and urged that the matter be now settled by this Honorable Court; otherwise, it will obviously become necessary to hereafter request this Honorable Court to grant a Writ of Certiorari in the above-mentioned litigation for the purpose of settling the question involved.

The litigation above referred to, now pending in the Court of Appeals of the District of Columbia, consists of the case of Metropolitan Life Insurance Company and The Travelers Insurance Company, Appellants, vs. Robert J. Hoage, Deputy Commissioner, etc., and Oscar M. Harkness, Appellees, October Term, 1931, No. 5532, in which the actual healing period was in excess of the schedule healing period; and the three following cases in which the actual healing period was less than the schedule healing period, namely:

Robert J. Hoage, Deputy Commissioner, etc., Appellant, vs. Andres Stone and Marble Company, a Corporation, and Massachusetts Bonding and Insurance Company, Appellees, October Term, 1931, No. 5522.

Robert J. Hoage, Deputy Commissioner, etc., Appellant, vs. Sterling Laundry Company, Inc., and. Phoenix Indemnity Company, Appellees, October Term, 1931, No. 5523.

Robert J. Hoage, Deputy Commissioner, etc., Appellant, vs. Chas. H. Tompkins Company and The Travelers Insurance Company, October Term, 1931, No. 5524.

Undoubtedly there is also now pending similar litigation in the various United States District Courts throughout the country, involving the same question, which question we submit is one of major importance to the employees, the employers (some of whom are self-insurers), and the insurance companies. It has been made known to counsel that in addition to the companies involved in the above-mentioned litigation, the following compensation insurance carriers consider this question of major importance, and desire this Honorable Court to grant the rehearing requested and to now pass upon the question, namely:

General Accident, Fire, and Life Assurance Corporation, Ltd.

Commercial Casualty Insurance Company

Century Indemnity Company

The Employers' Liability Assurance Corporation of London, Ltd.

London Guarantee & Accident Company, Ltd.

Conclusion.

For the reasons above given, and inasmuch as the opinion of this Honorable Court in this case does not dispose of the questions hereinabove raised, it is respectfully urged that a rehearing should be granted, and the judgment or decree below be reversed.

Respectfully submitted,

EDWIN A. SWINGLE,
Counsel for the Maryland Casualty Company, Petitioner.